



TRUSTS & ESTATES SECTION

THE STATE BAR OF CALIFORNIA

LEGISLATIVE PROPOSAL (T&E-2007-03) WILL AND TRUST CONTESTS: CONFORM SERVICE PROCEDURES

To: State Bar Office of Governmental Affairs

From: Tracy M. Potts, Chair, Executive Committee
Neil F. Horton, Member, Executive Committee and Chair, Litigation Committee

Re: Project No. 2006-03
Amendments to Division 7, Part 2, Chapter 3, Article 3, Probate Code §§8250
and 8251, and Article 4, §8271

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Digest:

The proposed amendments to the Probate Code would conform the procedures for service on interested persons of will contests and trust contests. Current law requires the issuance of a summons and service of summons pursuant to CCP §413.10, et seq. in the case of will contests and petitions to revoke a will previously admitted to probate, whereas trust contests may be served without the necessity of a summons or the methods of delivery in CCP §413.10. Instead, service of trust contests may be made in the same manner as most other petitions in trust and probate matters.

In light of the fact that a will contest arises only in circumstances where a will has been offered to probate, and that for a will to be admitted to probate, notice must be given to all interested persons, the requirement of a summons and service of the summons under the CCP on those same persons would seem unnecessary. This is equally the case when a will has already

been admitted to probate, and a petition is filed to revoke the will. The will presumably was admitted only after proper notice to all interested persons.

By contrast, the Legislature has not required the issuance of a summons or service of summons under the CCP for contests to trusts even where there may have been no prior trust proceedings. This is consistent with the fact that most petitions in trust proceedings, whether they are the initial proceedings or not, are instituted with the filing of a petition and service by mail.

Germaneness:

The subject matter of the proposed legislation is within the special expertise of the Trusts and Estates Section of the State Bar of California in that its members are practitioners before the probate courts in California and have particular expertise in will and trust contests. The Executive Committee of the Trusts and Estates Section recommends this proposed legislation for the purpose of harmonizing the statutes and promoting clarity, consistency and judicial economy in will and trust contests.

TEXT OF PROPOSAL:

SECTION 1. Section 8250 of the Probate Code is amended to read:

8250. (a) When a will is contested under Section 8004, the contestant shall file with the court an objection to probate of the will, *a copy of which shall be served* ~~Thereafter, a summons shall be issued and served, with a copy of the objection,~~ on the persons required by Section 8110 to be served with notice of hearing of a petition for administration of the decedent's estate. *If an objection to probate of the will is timely filed, the court shall continue the hearing of the petition for probate for not less than 30 days.* ~~The summons shall be issued and served as provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. The summons shall contain a direction that the persons summoned file with the court a written pleading in response to the contest within 30 days after service of the summons.~~

(b) A person named as executor ~~in~~ of the will is under no duty to defend a contest until the person is appointed personal representative.

SEC. 2. Section 8251 of the Probate Code is amended to read:

8251. (a) The petitioner and any other interested person may jointly or separately answer the objection or demur to the objection *at any time prior to the date of the continued hearing under § 8250(a)* ~~within the time prescribed in the summons.~~

(b) Demurrer may be made on any of the grounds of demurrer available in a civil action. If the demurrer is sustained, the court may allow the contestant a reasonable time, not exceeding 15 days, within which to amend the objection. If the demurrer is overruled, the petitioner and other interested persons may, within 15 days thereafter, answer the objection.

(c) If a person fails ~~timely to respond to the summons~~ *file a response to an objection prior to the continued hearing of the petition for probate as set forth in subdivision (a) of Section 8250:*

(1) The case is at issue notwithstanding the failure and the case may proceed on the petition and other documents filed by the time of the hearing, and no further pleadings by other persons are necessary.

(2) The person may not participate further in the contest, but the person's interest in the estate is not otherwise affected. Nothing in this paragraph precludes further participation by the petitioner.

(3) The person is bound by the decision in the proceeding.

SEC. 3. Section 8271 of the Probate Code is amended to read:

8271. (a) ~~On the filing of the petition, a summons shall be directed to~~ *Notice of hearing and a copy of the petition shall be served on* the personal representative and to the heirs and devisees of the decedent, so far as known to the petitioner. ~~The summons shall contain a direction that the persons summoned file with the court a written pleading in response to the petition within 30 days after service of the summons. Failure of a person timely to respond to the summons precludes the person from further participation in the revocation proceeding, but does not otherwise affect the person's interest in the estate.~~

~~(b) The summons shall be issued and served with a copy of the petition and proceedings had as in the case of a contest of the will. (c) If a person fails timely to respond to the summons~~ *petition:*

(1) The case is at issue notwithstanding the failure and the case may proceed on the petition and other documents filed by the time of the hearing, and no further pleadings by other persons are necessary.

(2) The person may not participate further in the contest, but the person's interest in the estate is not otherwise affected.

(3) The person is bound by the decision in the proceeding.